IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.12 of 2006

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1. Alok Kumar Sinha, S/o – Ajit Kumar Sinha
2. Sanjeev Kumar, S/o – Ajit Kumar Sinha
3. Sujeet Kumar, S/o – Ajit Kumar Sinha
4. Munita Sinha, D/o - Ajit Kumar Sinha

All resident of Chhatradhari Bazar near Sadar hospital chok, P.S.- Bhagwan bazar, Dist-Chapra(Saran)

... ... Appellant/s

Versus

Anil Kumar Singh & Anr.

... ... Respondent/s

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Code of Civil Procedure, 1908---O.6, R.17; O.41, R.27---Amendment of Pleadings and Power to take Additional Evidence in Appeal---application to amend pleading and to take additional evidence so as to incorporate information regarding title of Respondents/Defendants' vendor filed on behalf of Appellant/Plaintiff.

Findings: the court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties---it is a settled position of law that the proceeding of appeal is deemed to be in continuation of the suit--- despite the defendants' specific pleading as to their title in the suit land being based on the two sale deeds and on the other hand, the plaintiffs' specific pleading that the said sale deeds were completely illegal and the same were executed by Defendants' vendor illegally, the learned trial court did not frame an issue in this regard and particularly with regard to the authority of the Defendants' vendor to transfer the suit property in favour of the defendants and very surprisingly, in the absence of such issue, the learned trial court concluded in the issue No. 4 that the defendants succeeded to prove their title, right and possession---- the proposed amendment cannot be deemed to set up a new cause of action or a

new case, though as per this proposed amendment, the plaintiff/appellant has raised a specific question of paternity of Defendants' vendor---- proposed amendment can be deemed to be an elaborated pleading of the plaintiff and so far as the prayer made under Order 41 Rule 27 of C.P.C. is concerned, it appears that the documentary evidence received by the appellant under the Right to Information Act with regard to the alleged disputed relationship between Defendants' vendor and title holder of suit land cannot be deemed to be within the knowledge of the appellant as the appellant is said to be a resident of Bihar State while Defendants' vendor is said to be the resident of Uttar Pradesh State and the appellant got the relevant details through the documentary information after his much efforts only when he preferred an appeal before the State Information Commission---- if the said documentary information is accepted as an additional evidence on the part of the plaintiff/appellant at this belated stage then it will not prejudice the case of the defendants particularly when the respondents are given an opportunity to rebut the said additional evidence by way of documentary evidence--- both the interlocutory applications stand allowed. ***(Para- 10-14)***

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... ... Appellant/s

Versus

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... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. J.K. Verma, Adv.
Mr. Anjani Kumar, Adv.
Mr. Ravi Raj, Adv.
Ms. Shweta Raj, Adv.
For the Respondent/s : Mr. Dewendra Narayan Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL ORDER

48 17-03-2025 **Re : I.A. Nos. 3292 of 2018 & 3293 of 2018**

Both the interlocutory applications were filed by the original appellant(plaintiff), namely, Ajit Kumar Singh, who died on 21.07.2020 and his legal heirs have already been substituted in the memo of appeal vide order No. 24 dated 18.07.2022. The interlocutory applications Nos. 3292 of 2018 and 3293 of 2018 are hereinafter referred to as ‘I.A. No. 3292’ and ‘I.A. No. 3293’ respectively.

2. I.A. No. 3292 has been filed under Order 6, Rule 17 of the Code of Civil Procedure, 1908 (in short ‘C.P.C.’) with a prayer to permit the appellant to make an amendment in the

plaint by adding a new paragraph No. 22(क) which is as follows :-

> *"22(क)– यह कि प्रमोद कुमार ने जो दो बैनामा दिनांक 13.10.1999 बनाम मुदलह नं0 1 तथा 2 को तहरीर वो तकमीन किया है और अपने को पुत्र स्व0 हरिहर प्रसाद साकिन मौजा– अल्लीपुर, जिला–गोण्डा (यू0पी0) का दिखाया गया है, वह बिलकुल गलत वो बनावटी है। हरगिज प्रमोद कुमार हरिहर प्रसाद के पुत्र नहीं थे। मुदालह नं0 1 वो 2 ने जाली बैनामों को तैयार कराने के लिए एक अजनबी सख्सलाह को खड़ा करा के बैनामों का तहरीर एवम् तकमील करा लिया है जिसकी कोई पावंदी मनमुदई पर नही है।"*

3. Mr. J.K. Verma, learned counsel appearing for the appellants submits that the relevant facts leading to these interlocutory applications are that one late Ramprit Ram got 1 Bigha land, out of 5 Bighas 10 Katha of land in his share in partition of joint family property, of which details have been given in the plaint. The said Ramprit Ram sold his one Bigha land to his uncle late Surat Ram and one relative of his uncle, namely, Jai Ram Mahto on 12.08.1926. Later on, both the persons sold 10 kathha land out of the said land to one Padarath Ram on 08.04.1936 but since the consideration amount was not paid, so, that sale deed became null and void. Later, Jai Ram Mahto and one Vishwanath, son of late Surat Ram, sold the said 1 Bigha land purchased from Ramprit Ram, along with other

lands to one Awadh Bihari Prasad on 08.11.1944 and put him in possession over the said sold lands. Thereafter, one namely, Fateh Bahadur, who was a senior law practioner of Chapra purchased the said land from Awadh Bihari Prasad on 05.09.1945 in the name of his brother-in-law (*sarhu*) Jagarnath Prasad @ Tuntun Babu through *benami* sale and the said Jagarnath Prasad @ Tuntun Babu executed a registered *Ladavi* deed in the name of Fateh Bahadur claiming and showing himself as "NAME LENDER" on 08.08.1952 and later on, the said 1 bigha land was partitioned in the family of late Fateh Bahadur who had one more brother, namely, late Kapildeo Narayan and the plaintiff/original appellant and the substituted appellants are the descendants of late Kapildeo Narayan and finally, the plaintiff and his brother got 10 Katha land out of 1 Bigha through the partition suit No. 44 of 1969 and the said 10 katha land was again partitioned between the plaintiff and his own brother Anjanee Kumar Sinha and both got 5 Katha land each. Likewise, the descendants of Fateh Bahadur also got their share in the land partitioned. It is further submitted that the legal heirs of Fateh Bahadur and the brother of plaintiff sold their entire share in the said 1 Bigha land which originally belonged to late Ramprit Ram and all the purchasers came in possession

over the sold land and constructed different houses upon it also. The plaintiff's share came to 5 Katha land which he used to give on rent to several persons time to time and Bhusa business was also started by the plaintiff on his land, which is under dispute, with one Lal Babu Rai, brother of defendant No. 2. The said Lal Babu Rai executed one deed of agreement on 05.07.1984 (Ext. -5). Later on, Lal Babu Rai left the business and *Bhusa* business was closed. It is further submitted that one of the heirs of late Fateh Bahadur sold one katha land to one Lalan Prasad, who in turn sold the same to one Pramod Kumar Singh, own brother of defendant No. 1 in the month of January, 1989, thereafter both the defendants/respondents approached the plaintiff/appellant with a request to give his entire 5 Katha of land equally to them for doing *Bhusa* and Gitti business separately, to which the plaintiff agreed and he gave his land on the rent of Rs. 500/- to each of them on monthly basis and the rent was paid up to December 1997, but thereafter, the defendants stopped the payment of rent and when the plaintiff asked them to vacate his land, only then the defendants declared that they had purchased 2 katha 10 dhur each out of the suit land from one Pramod Kumar on 13.10.1999, and then the plaintiff filed his suit with the pleading that both the defendants had got no title as the so-

called Pramod Kumar had no right to execute the said sale deeds in favour of the defendants with regard to the lands in question as he had no relationship with the family of late Sheo Govind Sah, an ancestor of the family of Ramprit Ram. Later on, the plaintiff came to know that the said Pramod Kumar, supposed to be the son of Harihar Prasad, was not the son of Harihar Prasad and then he investigated the said fact and came to know through documentary evidence got under the Right to Information Act that the said Harihar Prasad had no son and in his family, there were only two persons. Learned counsel lastly submits that the proposed amendment is necessary for the purpose of determining the real questions in controversy and the amendment will not change the nature of the suit and during the pendency of this appeal, in the year 2012, the plaintiff/original appellant came to know that the alleged Pramod Kumar, the executant of the so-called sale deeds, is a fake person having no relationship with the family of Harihar Prasad and then he filed a petition on 03.01.2012 before the Public Information Officer-cum-Khand Vikash Adkhikari, Ganda, U.P. and after much efforts and finally on the direction of the State Commission given in the second appeal preferred by the appellant, the required information was provided to the appellant in written

form by way of Family Register as Annexure- '6A' to the I.A. No. 3293 and other Annexures 1 to 6 series are the relevant documents which show the appellant's attempt to get the said information under the Right to Information Act and all these documents may be accepted as additional evidence as it come in the purview of Rule 27 of Order 41 of C.P.C. and for doing the substantive justice, the documentary evidence should be accepted and by accepting these annexures as documentary evidence, the nature of the suit will not change and no new cause of action will arise in favour of the plaintiff as the evidence can be deemed to be only an extending part of the main pleading of the plaintiff.

4. In support of the above submissions, learned counsel appearing for the present appellants has placed reliance upon the following judgments of the Hon'ble Apex Court :-

(i) **Raj Kumar Bhatia vs. Subhash Chander Bhatia** reported in **AIR 2018 SC 100**, the relevant paragraph of the judgment upon which reliance has been placed is being reproduced as under :-

> ***"11.*** *This being the position, the case which was sought to be set up in the proposed amendment was an elaboration of what was stated in the written statement. The High Court has in the exercise of its jurisdiction under Article 227 of the Constitution entered upon the merits of*

the case which was sought to be set up by the appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction under Article 227. In Sadhana Lodh v. National Insurance Co. Ltd. [Sadhana Lodh v. National Insurance Co. Ltd., (2003) 3 SCC 524 : 2003 SCC (Cri) 762] , this Court has held that the supervisory jurisdiction conferred on the High Court under Article 227 is confined only to see whether an inferior court or tribunal has proceeded within the parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order. The trial court had in the considered exercise of its jurisdiction allowed the amendment of the written statement under Order 6 Rule 17 CPC. There was no reason for the High Court to interfere under Article 227. Allowing the amendment would not amount to the withdrawal of an admission contained in the written statement (as submitted by the respondent) since the amendment sought to elaborate upon an existing defence. It would also be necessary to note that it was on 21-9-2013 that an amendment of the plaint was allowed by the trial court, following which the appellant had filed a written statement to the amended plaint incorporating its defence. The amendment would cause no prejudice to the plaintiff."

(ii) **Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors.** reported in **AIR 2006 SC 1647**, the relevant paragraphs of the judgment, upon which reliance has been placed, are being

reproduced as under :-

> ***"16.*** *The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.*
>
> ***17.*** *Order VI, Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.*
>
> ***18.*** *In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.*
>
> ***19.*** *As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard*

the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.

20.** While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case."**

(iii) **Ishwardas vs. The State of Madhya Pradesh and Others** reported in **AIR 1979 SC 551**, the relevant paragraph of the judgment, upon which reliance has been placed, is being reproduced as under :-

"4. …….. *There is no impediment or bar against an appellate Court permitting amendment of pleadings so as to enable a party to raise a new plea. All that is necessary is that the appellate Court should observe the well known principles subject to which amendments of pleadings are usually granted. Naturally one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment and, if made at the appellate stage, the reason why it was not sought in the trial court. If the necessary material on which the plea arising from the amendment may be decided is already there, the amendment may be*

> *more readily granted than otherwise. But, there is no prohibition against an appellate Court permitting an amendment at the appellate stage merely because the necessary material is not already before the Court."*

5. On the other hand, Mr. Dewendra Narayan Singh, learned counsel appearing for the respondents has argued that the proposed amendment is neither substantial nor maintainable in the eye of law as well as on facts as the statement made in paragraph No. 15 in the I.A. No. 3292 is the same statement as made by the appellant in paragraph No. 22 of the plaint except the statement "nor the son of Harihar Prasad" and for the first time the said statement as to creating the issue of relationship between Harihar Prasad and Pramod Kumar is being raised by the appellant while the relationship in between them had come in the knowledge of the original plaintiff at the initial stage even before filing of the suit. By the proposed amendment, the appellant only wants to mislead the court and the burden to prove the fatherhood of the said Pramod Kumar lies upon the appellants and in this regard, the appellants are silent and further, the appellants have sought the amendment at belated stage not only after losing of the suit but also after refusal of their injunction prayer in this appeal while admittedly the appellant/plaintiff had got the knowledge of the relationship

between Pramod Kumar and Harihar Prasad from the written statement of the respondents as well as the sale deeds in question. It is further submitted that before the trial court, plaintiff filed a petition for an amendment in his plaint in which no prayer to add the proposed amendment in the plaint was made and the proposed amendment as sought by the appellants will completely change the nature of the suit as it will become Title Suit from the eviction suit if the prayer for amendment is allowed.

6. Learned counsel further submits that the basis of seeking the amendment by the appellants is an information claimed to have been received by them under the Right to Information Act which can not be deemed to be sufficient to prove that the vendor of the respondents is not the son of Harihar Prasad and further, for deciding the issue of parentage, a specific issue is required to be framed and thereafter, sufficient evidences should be taken from both the sides, for which, a separate suit is required which can not be decided in this appeal by this Court.

7. It is lastly submitted that the original plaintiff filed his suit seeking the relief for declaration of his title and possession over the suit land but no relief for declaration of the

sale deeds which have been executed by Pramod Kumar in favour of the respondents to be null and void has been sought for by the plaintiff and further the proposed documentary evidence can not be an exclusive evidence to prove the paternity in between the respondents' vendor and Harihar Prasad and the prayer made by the appellants in I.A. No. 3293 does not fall in any of the categories mentioned in the Rule 27 of Order 41 of C.P.C. and the same is also liable to be dismissed.

8. It is further submitted by respondents' counsel that the appellants' prayer for amendment in the plaint is also time barred.

9. In support of above submissions, respondents' counsel has placed reliance upon the following judgments of the different High Courts :-

(i) **Dr. Padmini Mishra vs. Dr. Ramesh Chandra Mishra** reported in **AIR 1991 Orissa 263**, the relevant paragraph, upon which reliance has been placed, is being reproduced as under :-

> ***"5.*** *…… It may be noted that the plaintiff had once filed an application in the trial court for amendment of the plaint to add some allegations regarding the subsequent second marriage of the defendant, but not the facts now sought to be introduced. The appellate court did not accept the contention that the foreign judgment is not binding on the parties on the ground that none of the exceptions mentioned in S. 13 has been pleaded or proved by the plaintiff. In spite of the above, no grounds were taken at the first instance in this Second Appeal on the basis of the facts now alleged. The amendment sought for is,*

therefore, not only belated, but has been conceived only to meet the legal difficulties which the appellant faced during the course of argument. The petition for amendment of the plaint is supported by an affidavit of the mother of the plaintiff and not by the plaintiff herself. In the affidavit it has been stated that she is the special power of attorney holder of the plaintiff and has been authorised under the power of attorney to take all steps, file affidavits, plaints, appeals etc. and to engage lawyers on behalf of the plaintiff in the trial court and in the appellate court. The pleadings are required to be signed and verified by the party or a person duly authorised by him and so also an application for amendment of the pleadings. The affidavit appended to the application for amendment by the another of the plaintiff does not specify as to whether she has been authorised to sign or verify the plaint in the absence of which it cannot be assumed that she has been so authorised. The introduction of the aforesaid new facts in the plaint by way of amendment would necessarily mean trial of the suit de novo from the stage of framing of issues. In the application it has been stated that in the year 1983 the plaintiff had come to India for about two weeks to participate in the religious rites following the death of her father and there was little time to instruct her advocate for the purpose of filing of the plaint. She merely handed over whatever papers were there with her to her Advocate Sri G.S. Rath for the purpose of drafting the plaint and that she had signed the plaint when prepared, without applying her mind as she was in a distressed state of mind. The aforesaid explanation after a lapse of more than 9 years from the date of filing of plaint for the first time in a second appeal is not acceptable to any court of law. It appears from Exts. 5, 6, 1 and 2 that the plaintiff had sent legal notices through her counsel in New Delhi repeatedly insisting that any action for dissolution of marriage in U.S.A. would not be in accordance with law as administered in India and, therefore, any proceeding taken there for divorce would not be recognised. In a letter dated 4-1-1980 the Attorney at law for the present respondent wrote to Rakesh Dayal, who was then the lawyer corresponding on instruction of the present plaintiff to the effect that the present respondent has resided in the State of New York for a period in excess of two years and that the plaintiff has been properly served with the summons and also that the State of New York will have jurisdiction for the action taken for divorce. These documents add further strength to infer that the various pleas of fact now sought to be introduced by way of amendment of the plaint are afterthought and intended to prolong the litigation. Though delay in making an application for amendment would not by itself be sufficient for its rejection, it may be one of the facts to be taken into account in granting or refusing the amendment. The predominant consideration for dealing with the application for amendment of a pleading is whether the amendment is necessary for determining the real question in controversy between the

parties and whether the amendment can be allowed without injustice to the otherside. From the discussions made above, it would be clear that the amendment of the plaint sought for by the appellant at this stage cannot be said to be one intended for determining the real question in controversy between the parties nor can it be said to be bona fide. As already stated, such an amendment, if allowed, would necessarily have the consequence of permitting the suit to be tried afresh from the stage of framing of the issues as none of the questions now raised was the subject-matter of the suit at the stage of trial. Thus the amendment of the plaint now sought for, if allowed would cause serious prejudice and injustice to the defendant. I would, therefore, conclude that the petitions for amendment of the plaint and also the memorandum of appeal are liable to be rejected, which I hereby do."

(ii) **C. Muthupandian vs. Ramasamy Thevar alias Kattiamaram Ramiah Thevar and others**, reported in **AIR 1995 Madras 277**, the relevant paragraphs, upon which reliance has been placed, are being reproduced as under : -

"3. *I have considered the rival submissions. This is not a case where only an alternative prayer is sought for. But for seeking the above said alternative prayer, a new set of facts is sought to be pleaded. In other words, a new cause of action is set up for seeking the above said alternative prayer. Originally, the plea was that the document No. 124 of 1989 dated 17-2-1989 was only a mortgage deed and not a sale deed as it purported to be. For making the original claim, relevant pleas were made in the original plaint. In the original plaint there was no reference at all to the other document, namely, document No. 423 of 1989 which was no doubt executed and registered on the very same day 17-2-1989, but a little earlier than the document No. 424. But the plea in the proposed amendment is Document No. 423 of 1989 which is now mentioned for the first time in the proposed amendment is a bogus document. This plea was not at all mentioned in the original plaint. Only if the said Document No. 423 of 1989 is a bogus one as pleaded in the proposed amendment the plaintiff could succeed in the above said alternative prayer. So, it is clear that a new cause of action is set up by*

the proposed amendment. In the above referred decision in A.K. Gupta and Sons v. Damodar Valley Corporation, AIR 1967 SC 96 : (1966) 1 SCR 796 : ILR 45 Pat 1298, while explaining the meaning of the term "cause of action", it is stated as follows:—

"The expression "cause of action" in the present context does not mean "every fact which it is material to be proved to entitle the plaintiff to succeed" as was said in Cooke v. Gill, (1873) LR 8 CP 107, 116 : 42 LJ CP 98 : 28 LT 32 : 21 WR 334, in a different context, for if it were so, no material fact could ever be amended or added and of course, no one would want to change or an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts ……. The words "new case" have been understood to mean "new set of ideas"……. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

***4.** As already stated, by the proposed amendment, a new claim is certainly made though alternatively, 'on a new basis constituted by new facts'. Therefore, the Court below has rightly dismissed the interlocutory application and disallowed the proposed amendment."*

10. Heard both the sides and perused the pleadings of both the parties as well as judgment impugned and also gone through the averments made in the aforesaid interlocutory applications as well as grounds of opposition made by respondents in their reply to the interlocutory applications. As per the provisions of Order 6 Rule 17 of C.P.C., the court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for

the purpose of determining the real questions in controversy between the parties. It is a settled position of law that the proceeding of appeal is deemed to be in continuation of the suit. The general rule is that a party is not allowed to set up a new case or new cause of action and all the amendments of the pleadings should be allowed, which are necessary for determination of the real controversies in the suit. The power to allow an amendment is wide and while deciding such amendment prayer, the court should not adopt hyper technical approach and in this regard, the liberal approach should be taken. Now, I come to the present matter. In the instant matter, the plaintiff/appellant filed his suit mainly praying the relief that his title be declared in the suit land and an eviction decree be passed against the defendants/respondents in respect of the suit property.

11. As per the pleading of the plaintiff, the father of the plaintiff and one Fateh Bahadur Sinha were real brothers and during their lifetime when they were joint, the plaintiff's uncle Fateh Bahadur Sinha purchased 1 Bigha land from one namely Awadh Bihari Prasad in the name of one Jagarnath Prasad @ Tuntun Babu, brother-in-law of the plaintiff's uncle, Fateh Bahadur Sinha, and that purchase was done on 05.09.1945 and

the said Jagarnath Prasad @ Tuntun Babu executed a Ladavi in favour of plaintiff's uncle Fateh Bahadur Sinha in respect of the said purchased land on 08.08.1952 and since 05.09.1945, plaintiff's uncle and his nephews had been keeping their possession peacefully. Thereafter, the plaintiff and his brother filed a partition suit in the year 1969 by way of partition Suit No. 44/1969 in the court of civil judge 1st, Chhapra, during the proceeding of that suit, the plaintiffs' uncle died and his heirs were substituted and that suit was decreed on the basis of compromise and the decree was passed on 17.06.1981 and as per the compromise decree, the plaintiff got his share in the eastern side of the purchased land, of which details is mentioned in the Schedule No. 3 of the plaint. The further case of the plaintiff is that the plaintiff's brother transferred his land detailed in the Schedule No. 2 of the plaint which had been allotted in his share to one Deep Narayan Singh and others and thereafter, the said purchaser made encroachment over some part of the land of the plaintiff for which a case for removing the encroachment was filed in the court of Munshif Chapra bearing No. 32/1987. As per the pleading of the plaintiff, the land detailed in the Schedule No. 4 of the plaint is the suit property of the present matter. From the pleading of the plaintiff, it

appears that the plaintiff had been claiming his right and title in the suit land since 1945. The defendants took the plea in their written statement that they had purchased the suit land on 13.10.1999 through two registered sale deeds from one Pramod Kumar, who is son of one Harihar Prasad. As per the pleading of the defendants, the said Harihar Prasad was the son of one Bataso Devi who was daughter of one Ram Sevak Ram and the said Ram Sevak Ram had one son, namely, Ramprit Ram and one daughter Bataso Devi. As per the pleading of the plaintiff, the said Ram Sevak Ram died leaving behind his son Ramprit Ram. The plaintiff mainly took the plea in his pleading that the execution of the disputed sale deeds in favour of the defendants on 13.10.1999 by said Pramod Kumar is completely illegal as he did not have any kind of connection to the suit land relating to the said sale deeds and also had no any connection to Shiv Govind Sah and his sons' family. In view of this pleading, the relationship between the said Pramod Kumar and the family members of late Shiv Govind Sah is an important fact as the sale deeds upon which the defendants based their claim suddenly came into light in the year 1999 while the plaintiffs have been claiming their interest and title in the suit land since the year 1945 and have also given the details of several cases such as

partition, encroachment running in between their family members and others in respect of the suit property.

12. Here, it is important to mention that despite the defendants' specific pleading as to their title in the suit land being based on the two sale deeds and on the other hand, the plaintiffs' specific pleading that the said sale deeds were completely illegal and the same were executed by said Pramod Kumar illegally, the learned trial court did not frame an issue in this regard and particularly with regard to the authority of the said Pramod Kumar to transfer the suit property in favour of the defendants and very surprisingly, in the absence of such issue, the learned trial court concluded in the issue No. 4 that the defendants succeeded to prove their title, right and possession in the capacity of *Baidaar* in the suit property.

13. In view of the pleading of the plaintiffs, the proposed amendment can not be deemed to set up a new cause of action or a new case, though as per this proposed amendment, the plaintiff/appellant has raised a specific question of the relationship between the said Pramod Kumar and Harihar Prasad and in the absence of an issue on this point, it will not be proper to give any finding on the said question but it will be looked into by this Court at the time of final hearing as this Court has power to remand the matter under Order 41 Rule 25 of C.P.C. if this Court finds it necessary to frame an issue on the said point after hearing both the

parties in detail. The proposed amendment can be deemed to be an elaborated pleading of the plaintiff and so far as the prayer made under Order 41 Rule 27 of C.P.C. is concerned, it appears that the documentary evidence received by the appellant under the Right to Information Act with regard to the alleged disputed relationship between the said Pramod Kumar and Ramprit Ram can not be deemed to be within the knowledge of the appellant as the appellant is said to be a resident of Bihar State while the said Pramod Kumar is said to be the resident of Uttar Pradesh State and as per the averments made in the I.A. No. 3293, the appellant got the relevant details through the documentary information after his much efforts only when he preferred an appeal before the State Information Commission. This Court is of the view that if the said documentary information is accepted as an additional evidence on the part of the plaintiff/appellant at this belated stage then it will not prejudice the case of the defendants particularly when the respondents are given an opportunity to rebut the said additional evidence by way of documentary evidence and further, this Court thinks that the said additional evidence should be taken in the interest of justice and also for doing complete justice. Accordingly, this Court allows both the prayers made by the appellant in the above-mentioned interlocutory applications.

14. Let the proposed amendment of which details has been given in the interlocutory application No. 3292 be added as

new paragraph 22(क) in the plaint after paragraph No. 22 and in this regard, necessary steps be taken by the appellant.

15. The respondents are given an opportunity to file an additional written statement in respect of the pleading mentioned in the new paragraph No. 22(क) of the plaint but the same must be filed within four weeks from today.

16. Let the Annexures 1 to 6A be made as part of the documentary evidence on behalf of plaintiff/appellant and the same be marked as Ext '13' to '18'.

17. The respondents are also given an opportunity to file any documentary evidence for rebutting the additional documentary evidence of the plaintiff but the same must be filed within six weeks from today.

18. In result, both the interlocutory applications bearing Nos. 3292 of 2018 & 3293 of 2018 stand allowed.

19. Put up this matter after seven weeks under appropriate heading.

(Shailendra Singh, J)

annu/-

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